

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 258

ELECTIONS LEGISLATION - 2003

Long Summary

SECTION 1.

Amends 21-2-2(4) relating to definitions and removes reference to machine or vote recorder and adds "DRE" and amends (28) by changing one word "within" to "from". This is needed due to legislation that allows a voting precinct to contain more than one polling place.

SECTION 2.

Amends 21-2-31 relating to duties of the State Election Board and inserts new paragraphs (7), (8), and (9) and provides that the Board shall promulgate rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote on each type of voting system used provides that the SEB may employ assistants as needed; and to take any action consistent with law to conduct fair and orderly primaries and elections.

SECTION 3.

Amends 21-2-50 by adding a new paragraph (15) that provides for the Secretary of State to develop, program, and build ballots for use by counties and municipalities on direct recording electronic (DRE) voting systems in use in the state.

SECTION 4.

Amends chapter 21-2 by adding new Code Section 21-2-50.2 and provides that the Secretary of State as the chief election official shall coordinate the implementation of the "Help America Vote Act" requirements in the State; authorizes the Secretary of State to promulgate rules and regulations to establish an administrative complaint procedure; provides that certain complaints under Title III of the "HAVA" shall not be subject to APA hearing procedures, and provides that the Secretary of State shall have authority to issue final orders for complaints filed under HAVA.

SECTION 5.

Amends 21-2-70 relating to powers and duties of election superintendents, and inserting new paragraphs (13), (14) and (15). Paragraph (13) remains basically the same. Paragraph (14) provides that election superintendents become certified by satisfactorily completing a certification program approved by the Secretary of State no later than January 1, 2007, provides for instruction, and provides who can be certified in order to be in compliance. Paragraph (15) provides for an oath to be taken by the superintendent prior to each election. Also, this section is amended to delete all reference to vote recorder.

SECTION 6.

Amends 21-2-70.1, by adding a new subsection (c), relating to municipal election superintendents and provides that municipal election superintendents become certified by satisfactorily completing a certification program approved by the Secretary of State no later than January 1, 2007, provides for instruction, and provides who can be certified in order to be in compliance.

SECTION 7.

Amends 21-2-71 (4) by striking subsection (4) and inserting in lieu thereof a new (4) which provides that the election superintendent shall maintain all voting equipment used by the election superintendent to conduct elections.

SECTION 8.

Amends 21-2-77 by striking subsection (b) relating to electronic election returns and inserting in lieu thereof a new subsection (b) which provides that election superintendents shall provide electronically to the Secretary of State within 7 days after the close of voting, election returns divided by precinct for all elections.

SECTION 9.

Amends code by adding new Code Section 21-2-101 (a), (b), (c).

Paragraph (a) provides that the election superintendents or designee shall become certified by completing a certification program by January 1, 2007, provides for instruction in the operation of the DRE's and federal and state laws; and provides that the local government shall cover costs for superintendents/designee participation, which shall not exceed 64 hours of training.

Paragraph (b) provides for the Secretary of State to grant a waiver upon presentation of evidence that the Board/individual is unable to complete training for reasons deemed sufficient by the Secretary of State.

Paragraph (c) provides that the State Election Board can fine the governing authority/or superintendent for failure to attain certification.

SECTION 10.

Amends 21-2-131 relating to qualifying fees and clarifies how qualifying fees are to be determined.

SECTION 11.

Amends 21-2-132 relating to filing notice of candidacy, nomination petition and affidavit by striking subsection (f) and adding a new subsection (f) which in addition to those requirements presently listed on the Notice of Candidacy, provides adding to the Notice of Candidacy the full name and name as the candidate desires it to be listed on the ballot; and authorizes the Secretary of State to secure any other information that may be necessary to comply with federal and state law.

SECTION 12.

Amends 21-2-153 relating to qualification of candidates for party nomination in a state or county primary by removing certain language that would now allow for candidates to qualify either in person or by their agents after the release of the official census for the purpose of redistricting.

SECTION 13.

Amends 21-2-153 relating to filing notice of candidacy for party nomination, by striking subsection (e) and adding a new subsection (e), which in addition to those requirements presently listed on the Notice of Candidacy, provides adding to the Notice the full name and name as the candidate desires it to be listed on the ballot; and authorizes the Secretary of State to secure any other information that may be necessary to comply with federal and state law.

SECTION 14.

Amends 21-2-153 relating to qualification of presidential electors so as to allow these candidates to qualify either in person or by their agents after the release of the official census for the purpose of redistricting.

SECTION 15.

Amends 21-2-214 by striking subsection (a) relating to qualifications of registrars and deputy registrars and inserting in lieu thereof a new subsection (a), which clarifies that Members of the Board of Registrars shall be electors of the county in which they serve and Deputy Registrars shall be electors of the state.

SECTION 16.

Amends 21-2-217 relating to rules for determining residence by striking this section and inserting in lieu thereof a new Code Section 21-1-217 which provides for rules in determining the residence of a person wishing to register to vote OR to qualify to run for elective office; clarifies residence; clarifies status when a person removes to another county or municipality with the intent of making it such person's residence; provides that specific address in county or municipality where a person has claimed a homestead exemption shall be deemed as person's residence address; and where the person receives significant mail may be considered.

SECTION 17.

Amends 21-2-219 by striking subsection (d) relating to the registration of members of the armed services and overseas voters and inserts in lieu thereof new subsections (d), (f), (g), and (h) which provides that a registration card submitted under this provision be accepted more than 180 days prior to the day of an election or primary; designates the Secretary of State to oversee the voting procedures for absent uniformed and overseas voters; provides that the counties shall report ballot information related to absentee uniformed and overseas voters to the Secretary of State within 60 days; and provides that the Secretary of State shall report the same information to the Election Assistance Commission (AEC) within 909 days. (HAVA mandate)

SECTION 18.

Amends 21-2-220 relating to the application for voter registration by striking the entire section and inserting a new Code section 21-2-220 (a) through (g) which corrects the Department of Public Safety to read Department of Motor Vehicles; provides that a first-time elector who registers in the state by U.S. mail present a copy of a current and valid identification as described in Code section 21-2-417 before casting a ballot in Georgia, except that uniformed and overseas voters are exempt from this requirement; provides that an application to register to vote cannot be rejected if it fails to contain a current and valid identification; provides that the registrar shall identify on the elector's list the names of all those 1st time voters who registered to vote by mail, but did not present the valid identification with the application for registration.

SECTION 19.

Amends 21-2-222 by adding a new subsection (1) relating to designated voter registration agencies so as to provide that the Secretary of State shall be authorized to promulgate rules and regulations for the transmission of signatures electronically from public assistance offices.

SECTION 20.

Amends 21-2-224 by adding a new subsection (g) relating to official list of electors and authorizes a designation on the elector's list that identifies whether the elector is a first time elector who registered by mail that must show identification at the polling place.

SECTION 21.

Amends 21-2-225 relating to the confidentiality of original voter registration applications by striking subsection (b) and inserting in lieu thereof a new subsection (b) that provides that a bank statement submitted with the voter registration application shall not be available for public inspection.

SECTION 22.

Amends 21-2-230 by striking (a) relating to challenge of persons on electors list and inserting in lieu thereof a new subsection (a) which provides that challenges to absentee ballots may be made at anytime prior to 5:00 P.M. on the day before the election.

SECTION 23.

Amends 21-2-233 by striking subsection (a), relating to comparison of change of address information supplied by the United States Postal Service with the electors list, and inserting in lieu thereof a new subsection (a) which authorizes the Secretary of State to do comparisons more frequently than once each year.

SECTION 24.

Amends 21-2-235 relating to inactive list of electors by striking subsection (a) and inserting in lieu thereof a new subsection (a) that deletes the phrase machines or vote recorders and substitutes the term "voting devices".

SECTION 25.

Amends 21-2-267 by striking subsection (a) relating to the arrangement of polling places and inserting in lieu thereof a new subsection (a) which allows the placement of the direct recording electronic voting units to be arranged in such a manner so as to ensure privacy of the elector while voting and at the same time allows monitoring of the units by the poll officers during voting hours; and permit the public to observe the process without affecting the privacy of the elector. Also this section is amended so as to remove any reference to vote recorders and adds language relative to direct recording electronic (DRE) voting units therein.

SECTION 26.

Amends 21-2-286 by striking paragraph (1) of subsection (b) relating to printing specifications, numbering, and binding of ballots and inserting a new paragraph (1) which provides that ballots used in primaries may have colored stripes or blocks to distinguish the ballots.

SECTION 27.

Amends 21-2-287 by striking this section relating to form of absentee ballots and inserting a new section which provides that the absentee ballot may have the precinct designation printed or stamped thereon.

SECTION 28.

Amends the code by adding a new subsection (e) to 21-2-300 relating to provision of new voting equipment by state and provides that counties are authorized to contract with municipal governments for use of the voting equipment under terms and conditions specified by the Secretary of State, and

Amends section 21-2-300 by adding Paragraph (2), which provides that counties may not levy a fee for use of state owned voting equipment but may require reimbursement for actual expenses related to the election.

SECTION 29.

Amends 21-2-301 relating to a pilot program by repealing this section in its entirety.

SECTION 30.

Amends 21-2-369 by striking subsection (a) relating to printing of optical scanning ballots and inserting in lieu thereof a new subsection (a) which describes how ballots shall be printed also provides that all ovals appearing on the ballot indicating where a voter is to mark the ballot may be printed in red ink.

SECTION 31.

Amends 21-2-379.5 by striking subsection (e) relating to ballot information, and inserting in lieu thereof a new subsection (e) which provides that the names of political party/body candidates for presidential electors shall not be listed on the ballot for the office of President and Vice President, but that the names shall be posted at each polling place and

further provides that a vote for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors.

SECTION 32.

Amends 21-2-379.6 by striking subsection (c) relating to maintenance of voting systems and supplies and inserting in lieu thereof a new subsection (c) which provides that the superintendent shall test a number of DRE units at random on or before the third day preceding a primary runoff or election runoff, special primary runoff and special election runoffs, to ascertain that the units will correctly count the votes cast for all offices; and provides a method for determining the number to be tested. Also requires that all memory cards must be tested.

SECTION 33.

Amends subsection (d) of Code section 21-2-379.7 by striking subsection (d) relating to preparation of polling places and inserting in lieu thereof a new subsection (d) that adds a new paragraph (4) which provides that at least one DRE will be designated for disabled voters in each precinct.

SECTION 34.

Amends 21-2-379.11 relating to procedure for tabulation of votes and inserting in lieu thereof a new Code Section 21-2-379.11 which provides for certain changes in terminology; and further provides method for the collection, retention and delivery of the tapes and memory cards to the election superintendent at the close of the polls.

SECTION 35.

Amends 21-2-380 by adding paragraph (b) so as to allow an elector to cast an absentee ballot during the period of Monday through Friday of the week immediately preceding the date of a primary, election, or run-off primary or election without having to provide a reason.

SECTION 36.

Amends 21-2-381 relating to making of applications for absentee ballots by striking subsection (a)(1) and inserting a new subsection (a)(1) which allows for an application for registration of a uniformed or overseas voter to be accepted more than 180 days before the election or primary; provides that the application shall be sufficient to receive an absentee ballot for two (2) general elections for federal offices and any runoffs there from, including presidential preference primaries.

Further, amends this section by striking paragraph (3) of subsection (a) relating to making of application for absentee ballot and inserting in lieu thereof a new paragraph (3) which provides that an application for an absentee ballot cannot be physically attached to a publication that advocates for or against a particular candidate, issue, etc. and distributed by any person, entity, or organization.

SECTION 37.

Amends 21-2-383 relating to preparation and delivery of absentee ballots by striking it in its entirety and inserting in lieu thereof a new section which provides in (b) that direct recording electronic voting systems may be used for casting absentee ballots and further provides that the absentee ballots shall be coded in such a way that if an absentee ballot is challenged it can be separated from other valid ballots at the time of tabulation and until challenge is resolved. Also deletes language relating to vote recorders.

SECTION 38.

Amends Code section 21-2-384 by striking subsection (b) and (c) relating to ballot instructions and oath of absentee electors and inserting in lieu thereof new subsections (b) and (c) which provide that the uniform instructions sent out with absentee ballots shall include information specific to the voting system that explains the effect of over voting and how to correct an error on the ballot before the ballot is cast; how to obtain a replacement ballot; and allows the Secretary of State to accept and adopt a new oath on absentee ballot materials promulgated by the Presidential Designee under Section 705(b) of HAVA for absent uniformed and overseas voters.

SECTION 39.

Amends 21-2-385 by striking subsection (a) relating to the procedure for voting absentee by inserting in lieu thereof a new subsection (a) which provides pursuant to the Help America Vote Act, that an absentee ballot from a first time registered elector who registers by mail and does not provide the identification at the time of registering or when submitting the absentee ballot to the registrar shall be treated as a provisional ballot and shall only be counted if the registrar is able to verify the identification and registration of the elector not later than two days pursuant to 21-2-419.

SECTION 40.

Amends 21-2-386 relating to safekeeping, certification, and validation of absentee ballots and by striking paragraph (1) of subsection (a) and inserting in lieu thereof a new paragraph (1) which clarifies the disposition of absentee ballots received after the closing of the polls on election day and new subsection (e) that provides for absentee votes cast on direct recording electronic voting systems be coded in such a way so that the ballot of a challenged voter can be separated from other valid ballots at the time of tabulation and either counted or rejected in accordance with 21-2-230. Also this section is amended to delete reference to vote recorders.

SECTION 41.

Amends 21-2-390 relating to delivery of election materials to clerk of superior court or city clerk after primary or election and inserting in lieu thereof a new 21-2-390 which clarifies where applications for all official absentee ballots shall be retained.

SECTION 42

Amends 21-2-400 relating to duties of superintendent to obtain cards of instruction, blank oaths, etc. by striking (c) and inserting a new subsection (c) that removes all references to vote recorders or voting machines.

SECTION 43.

Amends 21-2-405 relating to meeting of poll officers at place of primary or election by striking subsection (a) and inserting in lieu thereof a new subsection (a) which provides that the Chief Manager and two assistant managers shall meet at the appointed place for conducting the election at least one hour before the polls open and all other workers shall meet at least 30 minutes prior to the opening of the polls; and by adding a new subsection (e) which allows a county or municipality to offer poll officers other than the chief manager and assistant managers the option of working part of an election day and provides that any poll officers who begins a shift of work after the opening of the polls shall be required to take the same oath as other poll officers.

SECTION 44.

Amends 21-2-408 by striking subsection (c) relating to poll watchers and inserts in lieu thereof a new subsection (c) which removes all references to vote recorders and adds DRE's and optical scan voting systems; provides that each party may appoint two poll watchers to precincts where these systems are used.

SECTION 45.

Amends 21-2-409 relating to assisting electors who cannot read English or who have physical disabilities by striking subsection (a) and paragraph (2) of subsection (b) and inserting in lieu thereof a new subsection (a), which provides that an elector needing assistance shall take an oath that shall be administered by a manager, giving the reason why the elector requires assistance and that the printed name and signature of such person assisting shall be provided on the oath. Further provides that an elector who needs assistance due to blindness may receive assistance without the necessity of an oath, however, the printed name and the signature of the person assisting shall be provided on the declaration; and paragraph (2) which provides that no person whose name appears on the ballot as a candidate or certain relatives of the candidate may offer assistance during that particular election to any voter who is not related to such candidate.

SECTION 46.

Amends 21-2-413 by striking subsection (f) relating to conduct of voters, campaigners, and others at polling places generally and provides that an elector shall be permitted to be accompanied into the enclosed area and into a voting booth while voting by such elector's child or children under 18 years of age OR any child who is 12 years of age or younger and further provides that children cannot handle any ballot nor operate any voting equipment.

SECTION 47.

Amends 21-2-414 relating to restrictions on campaign activities within the vicinity of a polling place by striking subsections (f) and (g) and inserting in lieu thereof new subsections (f), (g), and (h), which provides that no person whose name appears as a candidate on the ballot, except the probate judge serving as election superintendent, shall physically enter any polling place other than the poll where the candidate is authorized to vote and once the candidate has voted, the candidate shall not return to such polling place until after the poll

has closed and voting has ceased; and further provides that any person who violates this Code section shall be guilty of a misdemeanor.

SECTION 48.

Amends 21-2-417 relating to identification at the polling place and the type of ballot allowed to be cast at the polling place by striking subsections (a) and (b) of 21-2-417 and inserting new subsections (a) and (b) which adds paragraph (14, (15, (16), and (17) to subsection (a) which allows that a copy of a utility bill, a bank statement, a government check or paycheck, or a government document that shows the name and address of the elector shall be added to the forms of ID acceptable at the polling place (required by HAVA) and further provides that a first time registered elector that registered by mail and fails to show the proper ID at the polling place shall cast a provisional ballot that will only be counted if the registrar can verify the identity and registration of the elector pursuant to 21-2-419.

SECTION 49.

Amends 21-2-418 by adding new subsections (d, (e), (f), and (g) relating to provisional ballots (HAVA related) so as to provide that in the event the time for closing the polls at a polling place or places is extended by court order, all electors who vote during such extended time period shall vote by provisional ballot only and these provisional ballots shall be kept separate and apart from other provisional ballots cast by electors during normal poll hours; provides that the registrars shall establish a free access system, such as a toll-free telephone number or Internet website, which allows the elector to determine if the provisional ballot counted; provides that poll workers shall give the elector information instructing the elector on how to access the system at the time of voting; provides that the system must be secure and confidential; and provides that failure to provide the access system shall subject the registrar and the county that employs the registrar to sanctions of the State Election Board.

SECTION 50.

Amends 21-2-438 relating to ballots identifying voter, not marked, or improperly marked declared void by striking subsection (c) and inserting a new subsection © which provides that the State Election Board shall promulgate rules and regulations for the counting of a vote pursuant to the Help America Vote Act, which requires that the state define a vote for each voting system used within the state to be uniform and nondiscriminatory.

SECTION 51.

Amended by repealing and reserving Part 4 of Article 11 re Vote Recorders.

SECTION 52.

Amends 21-2-480, relating to form and arrangement of optical scanning voting equipment, by striking subsection (g) and inserting in lieu thereof a new subsection (g) which provides that the political parties/bodies and names of the candidates for the offices of President and Vice President shall be listed on the ballot and not the individual names of the candidates for presidential electors; and further provides that the individual names or the

nominees of each political party or body for presidential elector shall be posted at each polling place; and further provides that a vote for the candidates for President and Vice President of a political party/body is deemed to be a vote for each of the candidates for presidential electors of such political party/body.

SECTION 53.

Amends 21-2-482 relating to absentee ballots for precincts using optical scanning voting equipment by striking the entire code section and inserting a new code section 21-2-482 which removes all reference to vote recorders and adds direct recording electronic (DRE) units.

SECTION 54.

Amends 21-2-483 relating to the counting of ballots by striking subsection (g) in its entirety and inserting a new subsection (g)(1) and (2) which provides that a precinct tabulator shall be programmed to return a ballot to a voter because of an over vote or spoiled ballot or other reason and provides that the voter can receive another ballot to correct the mistake; provides that Central tabulators be programmed to reject a ballot due to an over vote; provides for the creation of a Vote Review Panel to manually review these ballots to determine voter's intent by majority vote; and provides for the method of appointment of the Vote Review Panel.

SECTION 55.

Amends 21-2-493 relating to computation, canvassing, and tabulation of returns by striking subsections (c) and (e) and inserting a new subsection (c) and (e) which deletes all reference to vote recorders.

SECTION 56.

Amends 21-2-495 relating to procedure for recount or recanvass of vote by striking subsection (c) and inserting in lieu thereof a new subsection (c), which changes the time for requesting a recount from five calendar days to two business days following the certification of the election results. Also deletes reference to vote recorders.

SECTION 57.

Amends 21-2-499 relating to the duty of Secretary of State as to tabulation, computation and canvassing of votes for state and federal offices by authorizing the Secretary of State to issue a new certification of the election results in the event an error is found in the certified returns presented to the Secretary of State or in the tabulation, computation or canvassing of vote; further provides that the county shall be notified of the error and directed to correct the errors and re-certify the returns; provides that a new certification shall be filed in the office of the Secretary of State, and provides that deadlines pertaining to the certification specified in this code section may be altered by an order of a judge of superior court for just cause.

SECTION 58.

Amends 21-2-500 relating to delivery of voting materials by striking subsections (a) and (c) and inserting a new subsection (a) and (c) which deletes all reference to vote

recorders and computer programming decks for ballot tabulation programs and provides for an alternative electronic medium for storing election returns.

SECTION 59.

Amends 21-2-501 relating to number of votes required for election and includes special primary and special primary runoff and clarifies who the winning candidate is in a general election when two candidates receive more than a plurality of the votes cast; and clarifies who is eligible to vote in a runoff election.

SECTION 60.

Amends 21-2-528 relating to appeals from the determination of the court on contest petition to be filed with the Supreme Court so as to be consistent with the Georgia Constitution.

SECTION 61.

Amends 21-2-566 relating to interference with primaries and elections generally by striking paragraph (8) and inserting a new paragraph (8) that deletes all references to vote recorders and inserts DRE equipment into the provision.

SECTION 62.

Amends 21-2-579 relating to fraudulently allowing ballot, ballot card, or voting machine to be seen by striking paragraph (3) and inserting a new paragraph (3) that removes all reference to vote recorders and inserts in place thereof DRE equipment.

SECTION 63.

Amends 21-2-582 relating to tampering with, damaging, or preventing the proper operation of vote recorders by striking the entire section and inserting DRE equipment and tabulating computer or device.

SECTION 64.

Amends 21-2-582.1 relating to penalty of voting equipment modification by removing vote recorder language from this provision.

SECTION 65.

Amends 21-2-587 relating to frauds by poll officers, and provides that DRE memory cards are also required to be returned along with other election supplies and materials. Also deletes all references to vote recorders.

SECTION 66.

All laws and parts of laws in conflict with this Act are repealed.